

**VIA EFS**

Date of Deposit: March 18, 2008

Attorney Docket No. 25739-024

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Leventhal et al.  
Serial No: 10/633,179  
Filed: August 1, 2003  
For: Retractable Assembly and Packaging System for Same

Examiner: John G. Pickett  
Art Unit: 3728

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPLICATION FOR PATENT TERM ADJUSTMENT**

Sir:

Applicants submit herewith this Application for Patent Term Adjustment under 37 C.F.R. § 1.705(b) in the above-referenced patent application accompanied by the fee as required by § 1.18(e). Applicants believe that no additional fees are due with the filing of this Application for Patent Term Adjustment; however, if any fees are required, Applicants hereby authorize the Commissioner to charge this fee, or credit any overpayment in fees, to Deposit Account No. 50-0311; Customer Number **30623**; referencing Attorney Docket No. 25739-024.

A Notice of Allowance in the above referenced patent application was mailed on December 18, 2008, indicating that a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) calculated the Patent Term Adjustment will be 323 days.

Applicants submit that the 323 days of Patent Term Adjustment identified in the Notice should be increased based on the facts given below. This Request is submitted in view of the decision by the U.S. District Court decision in *Wyeth v. Dudas* (D.D.C. 2008) on September 30, 2008. In addition, this Request is submitted with payment of the patent issue fee.

**More than 3-Year Pendency**

Applicants request additional days based on the fact that the above-referenced patent was pending for more than three years. The effective filing date of the instant utility application was August 1, 2003 and the first Notice of Allowance was mailed on August 22, 2008. The 3-year period ended on August 1, 2006. Thus, Applicants' term of the patent should be extended in view of this fact with the term adjusted for Applicants' delay, as discussed below.

**Error in Initial PTA Calculation**

(1) Applicants note that the term of the patent to issue from the above referenced patent application has been reduced by 91 days due to the three-month extension of time that Applicants filed to extend the response date to the non-final Office Action mailed January 11, 2006 to July 11, 2006. Applicants also note that the term of the patent to issue from the above referenced patent application has been reduced by 91 days due to the three-month extension of time that Applicants filed to extend the response date to the Final Action mailed January 7, 2008 to July 7, 2008. PAIR indicates the Office delay of 285 days to issue the non-final Action, which was a Restriction Requirement mailed July 13, 2005.

However, the Office erroneously mailed a Notice of Abandonment for failing to file a timely response to the Office Action mailed January 11, 2006 on August 22, 2006. Applicants filed a Petition to Withdraw the Holding of Abandonment on September 6, 2006, which was granted on November 14, 2006. Applicants' Petition is designated incorrectly in PAIR as "Supplemental Response" and should be listed correctly as "Petition to Withdraw Holding of Abandonment."

In addition, during the intervening period between July 11, 2006 (Applicants' Response to non-final Office Action) and September 20, 2006, the Office issued a Notice of Non-Compliant Amendment under § 1.121 for informalities in the Response filed July 11, 2006, including failure to identify the new drawings as "replacement drawings" and to include a complete listing of the claims, namely, Claims 1-21 as being cancelled/withdrawn due to the restriction requirement. However, Applicants did not receive the Notice of Non-Compliant Amendment because the wrong application serial

number was included in the Notice and sent to another attorney of record at another law firm. The Notice was never made of public record in PAIR. Applicants received a copy of the Notice from the law firm on September 20, 2006. Attached as Exhibit A of this Application is a copy of Applicants' response to the Notice of Non-Compliant Amendment filed with the Office on October 20, 2006, including a copy of the facsimile transmission of September 20, 2006 we received from the law firm to which the Office mailed the Notice of Non-Compliant Amendment. Please note the wrong application serial number indicated in this Notice. The application serial number indicated in the Notice is 10/663,179, while the application serial number of the instant application is 10/633,179. We received the facsimile without the cover sheet to the Notice that would have indicated the mailing date of the Notice; we therefore used the date of the facsimile, namely, September 20, 2006, to docket the response date of October 20, 2006 to respond to the Notice of Non-Compliant Amendment.

(Please note, in Applicants' Response to Non-Compliant Amendment filed October 20, 2006, Applicants refer to the September 6, 2006 Request to Withdraw Holding of Abandonment as "Applicants' amendment;" however, this is incorrect and Applicants' submission of September 6, 2006 is the Request to Withdraw Holding of Abandonment.)

Please note, PAIR identifies Applicants' response to the Notice of Non-Compliant Amendment entered on October 20, 2006 as "Response to Non-Final Action."

As mentioned, the Notice of Non-Compliant Amendment was not made of public record in PAIR. In addition, the Notice of Non-Compliant Amendment was not sent to the correct attorney of record. Attached as Exhibit B are copies of the Office's Notice of Non-Compliant Amendment mailed July 26, 2006 and the Office's Letter Withdrawing a Notice of Non-Compliant Amendment mailed October 23, 2006 in the application serial no. 10/663,179 (which is not the instant application serial no. 10/633, 179). As the Office's Letter indicates, the Office erroneously mailed the Notice of Non-Compliant amendment in the wrong patent application.

As a result of the erroneous entry of Applicants' Petition to Withdraw Holding of Abandonment filed September 6, 2006 into PAIR as "Supplemental Response" and the erroneous mailing of the Notice of Non-Compliant Amendment to the wrong attorney of

record, the Office has reduced the Applicants' potential patent term by an additional 101 days. (PAIR indicates Applicants' delay as of October 20, 2006 as 192 days - 192 less 91 days for 3-month extension = 101.)

Applicants respectfully submit that the patent term may be reduced due to Applicants filing of a non-compliant amendment; however, PAIR should reflect when the Notice of Non-Compliant Amendment was mailed and the Office should take into account its error in applying the wrong application serial number to this Notice and sending it to the wrong attorney of record, which accounted toward 101 days of Applicants' delay that the Office has determined and would reduce the patent term by. In addition, Applicants respectfully submit PAIR should not reflect Applicants' delay for filing the Request to Withdraw Holding of Abandonment on September 6, 2006 as a Supplemental Response. Applicants respectfully submit that the papers Applicants filed on July 11, 2006 as its Response to Non-Final Action included the correct application serial number.

Because Applicants are unable to determine the number of days that the patent term should be reduced due to these facts, and, more importantly, because Applicants cannot determine the mailing date that should be accorded the Notice of Non-Compliant Amendment, Applicants' respectfully request the Office recalculate the number of days of patent term reduction due to Applicants' Non-Compliant Amendment, taking into account any delay assigned to Applicants as a result of the Office's erroneous issuance of the Notice of Abandonment and its error in mailing the Notice of Non-Compliant Amendment in the wrong patent application; and, then accordingly, reduce the Office's delay by this number of days.

(2) In addition, Applicants respectfully request the Office recalculate the Office's delay in view of the fact that the instant application was pending for more than 3 years. The instant application was filed on August 1, 2003 and the first Notice of Allowance was issued on August 22, 2008. As of August 1, 2006, the Office delay should be determined. PAIR only reflects the Office delay from Applicants' Response to non-Final Action of October 20, 2006 to the Office mailing of the Final Rejection on January 7, 2008, indicating the Office delay is 321 days. However, the Office delay to issue the

Final Rejection overlaps with the Office delay due to the instant application pending for more than 3 years. See, *Wyeth v. Dudas*.

**Charts Indicating Office and Applicants' Delay**

Applicants' offer the following calculations of Office and Applicants' delay.

**Below is a chart of Office Delay:**

Application Filed:	08/01/2003
Restriction Requirement Mailed:	07/13/2005

Days Delay:	285
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Applicants' Response - Non-Final Action:	10/20/2006
Office Action Required:	02/20/2007
Final Rejection:	01/03/2008*

Application Pending for More Than 3 Years:  
3 Years from Filing Date: 08/01/2006  
Issuance of First Notice of Allowance: 08/22/2008  
(\*Office Delay Overlaps 3 Year Pendency -  
see *Wyeth*)

Days Delay:	750
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Total Office Delay:	<u>1,035</u>
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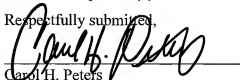
Below is a chart of Applicants' Delay:

Non-Final Action:	01/11/2006
Response to Non-Final Action with Three-Month Petition:	07/11/2006
Days Delay:	91
Notice of Non-Compliant Amendment:	Date Accorded Mailing to Applicant Not Known
Response to Non-Compliant Amendment:	10/20/2006
Days Delay:	?
Final Rejection	01/03/2008
Response to Final Rejection with Three-Month Petition:	07/07/2008
Days Delay:	91
Filing RCE:	07/07/2008
Issuance of First Notice of Allowance:	08/22/2008
Days Delay:	47

Applicants' respectfully request the Office determine Applicant's delay due to filing a Non-Compliant Amendment on July 11, 2006 in light of the Office's erroneous issuance of the Notice of Abandonment on August 22, 2006, and the Office's erroneous mailing of the Non-Compliant Amendment to a third party as a result of use of the wrong application serial number, namely, 10/ 663,179, rather the application serial number of the instant application, namely 10/633,179.

The above-referenced patent is not subject to a terminal disclaimer. In accordance of the facts stated above, Applicants respectfully request review of this Application for Patent Term Adjustment under 37 C.F.R. § 1.705(b)

Respectfully submitted,



Carol H. Peters

Registration No. 45,010  
MINTZ, LEVIN, COHN, FERRIS  
GLOVSKY and POPEO, P.C.  
Attorneys for Applicant  
One Financial Center  
Boston, Massachusetts 02111  
Telephone: 617/348-4914  
Facsimile: 617/542-2241  
Customer No. 30623

Date: March 18, 2009

4568815v.1



# **EXHIBIT A**

Attorney Docket No. 25739-024

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Leventhal et al.  
Serial No: 10/633,179  
Filed: August 1, 2003  
For: RETRACTABLE RAZOR ASSEMBLY AND  
PACKAGING SYSTEM FOR SAME

Examiner: Steven B. Pollicoff  
Art Unit: 3728

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Sir:

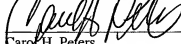
Transmitted herewith for filing in the present application are the following documents:

- (1) RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT UNDER  
37 C.F.R. 1.121 FAXED SEPTEMBER 20, 2006
- (2) LETTER TO THE EXAMINER;
- (3) COPY OF FAXED NOTICE OF NON-COMPLIANT AMENDMENT;
- (4) LETTER TO THE OFFICIAL DRAFTSMAN;
- (5) THREE (3) SHEETS OF INFORMAL "REPLACEMENT SHEET" DRAWINGS-  
INCLUDING FIGURES 6, 9, AND 9E; AND
- (6) RETURN POST CARD.

If any of the above identified items is not included in this submission, the Office is respectfully requested to contact the undersigned at the telephone number provided.

The Commissioner is hereby authorized to charge the balance due, or to credit any overpayment, to the account of the undersigned, Deposit Account No. 50-0311, referencing Attorney Docket No. 25739-024.  
A duplicate copy of this transmittal letter is enclosed for this purpose.

Respectfully submitted,



Carol H. Peters  
Registration No. 45,010  
MINTZ, LEVIN, COHN, FERRIS  
GLOVSKY and POPEO, P.C.  
Attorneys for Applicant(s)  
One Financial Center  
Boston, MA 02111  
Telephone: 617/348-4914  
Facsimile: 617/542-2241  
email: [cpeters@mintz.com](mailto:cpeters@mintz.com)

Date: October 20, 2006

Attorney Docket No. 25739-024

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Leventhal et al.  
Serial No: 10/633,179  
Filed: August 1, 2003  
For: RETRACTABLE RAZOR ASSEMBLY AND  
PACKAGING SYSTEM FOR SAME

Examiner: Steven B. Pollicoff  
Art Unit: 3728

**COPY**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Sir:

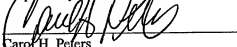
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INCLUDING FIGURES 6, 9, AND 9E; AND
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Respectfully submitted,



Carol H. Peters  
Registration No. 45,010  
MINTZ, LEVIN, COHN, FERRIS  
GLOVSKY and POPEO, P.C.  
Attorneys for Applicant(s)  
One Financial Center  
Boston, MA 02111  
Telephone: 617/348-4914  
Facsimile: 617/542-2241  
email: [cpeters@mintz.com](mailto:cpeters@mintz.com)

Date: October 20, 2006

Date of Deposit: October 20, 2006

Attorney Docket No. 25739-024

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Leventhal et al.  
Serial No: 10/633,179  
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For: RETRACTABLE RAZOR ASSEMBLY AND  
PACKAGING SYSTEM FOR SAME

Examiner: Steven B. Pollicoff  
Art Unit: 3728

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

LETTER TO EXAMINER

Applicants respectfully draw the Examiner's attention to the incorrect U.S. Serial Number on the Notice of Non-Compliant Amendment Under 37 C.F.R. §1.121. The U.S. Serial Number on the Notice reads 10/663,179. The Notice was entered into the wrong application, consequently, it was sent to the wrong address. The law firm handling the application for U.S.S.N. 10/663,179 faxed to us the Notice on September 20, 2006 (a copy of which is enclosed). Applicants respectfully request the Notice be entered into the record under the correct U.S.S.N. 10/633,179. We are using the date of September 20, 2006 as the date the Notice was mailed because that is the date on which we were made aware that a Notice of Non-Compliant Amendment was issued.

Also, Applicant requests that no additional charges be incurred since this was an Office error.

However, the Commissioner is hereby authorized to charge the balance due, or to credit any overpayment, to the account of the undersigned, Deposit Account No. 50-0311, referencing Attorney Docket No. 25739-024.

Respectfully submitted,



Carol H. Peters  
Registration No. 45,010  
MINTZ, LEVIN, COHN, FERRIS  
GLOVSKY and POPEO, P.C.  
Attorneys for Applicant(s)  
One Financial Center  
Boston, MA 02111  
Telephone: 617/348-4914  
Facsimile: 617/542-2241  
email: [cpeters@mintz.com](mailto:cpeters@mintz.com)

Date: October 20, 2006

**DOCKETING****IAN F. BURNS & ASSOCIATES, P.C.**  
*Intellectual Property Law*P.O. Box 71115  
Reno, Nevada 89570

Telephone 775-826-6160 · Facsimile 775-828-1651

September 20, 2006

25739-024

OCT 03 2006

If there is a problem with transmission or if all pages are not received, please call (775) 826-6160 for retransmission.

**TO: Carol Peters****FAX #: (617) 542-2241****FROM: Thomas Howell****RE: Notice of Non-compliant Amendment****COPY**

Number of pages including this cover page: 3

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is **PRIVILEGED, CONFIDENTIAL** and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original to us by mail without making a copy. Thank you.

☐ URGENT ☐ PLEASE SIGN AND RETURN ☐ PLEASE REVIEW AND COMMENT ☐ PLEASE REPLY

Comments:

<input checked="" type="checkbox"/> Data Entry	Done By
<input checked="" type="checkbox"/> Docket Entry	MB
<input type="checkbox"/> Docket Cross Off	
<input type="checkbox"/> Previously Entered	2/20/07
<input type="checkbox"/> No Docketing Req.	
<input type="checkbox"/> ELITE	Amel
<input type="checkbox"/> Annuities	

# **Notice of Non-Compliant Amendment (37 CFR 1.121)**

Application No.

10/663179

10/633,179

Applicant(s)

Examiner

LAYNO

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on \_\_\_\_\_ is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

☐ 1. Amendments to the specification:

- ☐ A. Amended paragraph(s) do not include markings.  
☐ B. New paragraph(s) should not be underlined.  
☐ C. Other \_\_\_\_\_

☐ 2. Abstract:

- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.  
☐ B. Other \_\_\_\_\_

☒ 3. Amendments to the drawings:

- ☒ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).  
☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.  
☐ C. Other \_\_\_\_\_

☒ 4. Amendments to the claims:

- ☒ A. A complete listing of all of the claims is not present.  
☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)  
☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).  
☒ D. The claims of this amendment paper have not been presented in ascending numerical order.  
☒ E. Other: CLAIMS 1-21 MISSING.

☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

## **TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

- Applicant is given no new time period if the non-compliant amendment is an after-final amendment, an amendment filed after allowance, or a drawing submission (only). If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the entire corrected amendment must be resubmitted.
- Applicant is given one month, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action. If any of above boxes 1. to 4. are checked, the correction required is only the corrected section of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action.

### **Failure to timely respond to this notice will result in:**

- Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action; or  
 Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

KIMBERLY COOPER

Legal Instruments Examiner (LIE), if applicable

571 272 4339

Telephone No.

*mailed*

# **Notice of Non-Compliant Amendment (37 CFR 1.121)**

Application No.

10/663179

Examiner

LAYNO

Applicant(s)

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on \_\_\_\_\_ is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

☐ 1. Amendments to the specification:

- ☐ A. Amended paragraph(s) do not include markings.  
☐ B. New paragraph(s) should not be underlined.  
☐ C. Other \_\_\_\_\_

☐ 2. Abstract:

- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.  
☐ B. Other \_\_\_\_\_

☒ 3. Amendments to the drawings:

- ☒ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).  
☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.  
☐ C. Other \_\_\_\_\_

☒ 4. Amendments to the claims:

- ☒ A. A complete listing of all of the claims is not present.  
☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)  
☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).  
☒ D. The claims of this amendment paper have not been presented in ascending numerical order.  
☒ E. Other: CLAIMS 1-21 MISSING.

☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

## TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

- Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment, an amendment filed after allowance, or a drawing submission (only). If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
- Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action; or  
**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

KIMBERLY COOPER

Legal Instruments Examiner (LIE), if applicable

571 272 4339

Telephone No.

Attorney Docket No. 25739-024

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Leventhal et al.  
Serial No: 10/633,179  
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For: RETRACTABLE RAZOR ASSEMBLY AND  
PACKAGING SYSTEM FOR SAME

Examiner: Steven B. Pollicoff  
Art Unit: 3728

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT  
UNDER 37 C.F.R. § 1.121 FAXED SEPTEMBER 20, 2006

Sir:

Responsive to the Notice of Non-Compliant Amendment faxed September 20, 2006, Applicants provide this response in fulfillment of the requirements identified in the Notice.

Applicants' amendment submitted to the U.S. Patent Office on September 6, 2006 failed to list the claims cancelled from prosecution in the above-identified application. In compliance with the Notice, Applicants submit herewith a complete listing of the claims.

AMENDMENTS

Amendments To Specification Pursuant 37 C.F.R. § 1.121(b)

Applicants respectfully request amendments to the application specification as follows.

- (1) On page 14, at lines 20-22, please delete the paragraph describing FIG. 2A and insert therein the following replacement paragraph:



FIG. 2A is a ~~cross-sectional~~ perspective view of an outer cylinder of the razor assembly shown in FIG. 1 illustrating a detent (shown in dashed lines) defined in an inner surface of the cylinder in one embodiment of the invention;

- (2) On page 15, at lines 10-11, please delete the paragraph describing FIG. 6A and insert therein the following replacement paragraph:

FIG. 6A is a cross sectional top view of an actuating element of the razor assembly shown in FIG. 6 taken along line A-A shown in FIG. 6;

- (3) On page 15, at lines 12-13, please delete the paragraph describing FIG. 6B and insert therein the following replacement paragraph:

FIG. 6B is a cross sectional side view of the actuating element ~~shown in FIG. 6A~~ coupled with an inner cylinder of the razor assembly shown in FIG. 6 taken along line B-B shown in FIG. 6;

- (4) On page 15, at lines 22-23, please delete the paragraph describing FIG. 9C and insert therein the following replacement paragraph:

FIG. 9C is a cross sectional top view of a cylinder of a handle assembly of the razor assembly shown in FIG. 9 with the clasp shown in FIGS. 9A-9B attached thereto taken along line C-C shown in FIG. 9 and taken along line D-D shown in FIG. 9E;

Amendments To Drawing Pursuant 37 C.F.R. § 1.121(d)

Applicants respectfully request amendment of the present application to include amended drawings identified as Fig 6, Fig. 9, and Fig. 9E. Replacement Sheets of Fig. 6, Fig. 9 and Fig. 9E are submitted herewith displaying the proposed amendments. Corresponding amendments to the application specification have been requested above pursuant 37 C.F.R. § 1.121(b).

Amendments To Claims Pursuant 37 C.F.R. § 1.121(c)

Applicants respectfully request amendment of Claims 22, 25-29, 31-35, 38-40, and 48-49, as provided below. Applicants also respectfully request cancellation of Claims 24, 36-37, and 42-44 without prejudice to the subject matter contained therein. In addition, Applicants respectfully request amendment of the present application to include new Claims 50-51, as provided below.

1-21. Cancelled.

22. (Currently amended) A packaging system for containing and for displaying a product, the packaging system comprising:

a housing including a first portion and a second portion, the first portion being configured to removably ~~connected~~ connect to the second portion and, when the first and second portions are connected, at least part of the connected first and the second portions defines ~~defining~~ a chamber to dispose at least a portion of the product therein, ~~the first portion and the second portion further defining~~ and defines an internal configuration to accommodate a shape and size of the portion of the product, ~~and the housing further including~~ a first closed end and a second open end, wherein when the portion of the product is disposed in the chamber, at least a another portion of the product extends from the second open end of the housing; and

an insert card disposed between the first portion and the second portion and being substantially planar to support the housing, the insert card ~~having an interior notch disposed and~~ defining an aperture configured to receive at least a portion of the chamber and to thereby accommodate the chamber of the housing; and

two diametrically opposed tabs disposed along an edge of the insert card defining the aperture, each tab extending inwardly toward the aperture and being disposed and configured such that at least a portion of one of the tabs separately contacts the portion of the product to support the product in the packaging system.

23. (Original) The packaging system of claim 22, wherein the first portion and the second portion are constructed at least in part of a transparent material to provide visual inspection of the product.

24. Cancelled.

25. (Currently amended) The packaging system of claim 24 ~~22~~, wherein each of the two diametrically opposed tabs is disposed and configured such that at least a portion of one of the tabs is received in a recess defined in an outer surface of the product ~~includes one or more recesses, each recess being configured to receive and to mate with one of the tabs such that when the product is disposed in the chamber, each recess receives a tab.~~

26. (Currently amended) The packaging system of claim 22, wherein the first portion and the second portion have a substantially similar size and a substantially similar shape.

27. (Currently amended) The packaging system of claim 22, wherein the first portion and the second portion each define at least an upper section of a first shape and a first size, and at least a lower section of a second shape and a second size to ~~thereby~~ accommodate the shape and size of at least one portion of the product.

28. (Currently amended) The packaging system of claim 22, wherein the first portion and the second portion each define one or more sections of a first shape and a first size, and one or more sections of a second shape and a second size to accommodate the shape and size of at least one portion of the product.

29. (Currently amended) The packaging system of claim 22, wherein the first portion and the second portion define, when connected, an internal configuration having one or more sections having one or more shapes and one or more sizes to define the chamber such that the chamber to accommodate accommodates the shape and size of at least one portion of the product.
30. (Original) The packaging system of claim 22, wherein the product is a retractable razor.
31. (Currently amended) The packaging system of claim 30, wherein the another portion of the product extending from the second open end of the packaging system includes an actuating element configured to activate the retractable razor.
32. (Currently amended) The packaging system of claim 31 ~~30~~, wherein the first portion and the second portion are constructed at least in part of a transparent material to provide visual inspection of at least a portion of the retractable razor.
33. (Currently amended) The packaging system of claim ~~32~~ 30, wherein the first portion and the second portion define ~~an upper~~ at least one section having an internal size and an internal shape to accommodate one or more moving elements of the retractable razor.
34. (Currently amended) The packaging system of claim 33, wherein the internal size and the internal shape of the ~~upper~~ at least one section ~~provide~~ provide clearance to permit ~~a movable blade support assembly of the retractable razor~~ the one or more moving elements to move into one or more ~~operating~~ positions without contacting the ~~upper~~ at least one section.

35. (Currently amended) The packaging system of claim 34 ~~33~~, the first portion and the second portion further define ~~a lower~~ at least one other section having an internal size and an internal shape to accommodate ~~a handle of the retractable razor~~ one or more other elements of the product.

36. Cancelled.

37. Cancelled.

38. (Currently amended) The packaging system of claim 37 ~~30~~, wherein an outer surface of ~~the~~ a handle of the retractable razor defines one or more recesses, each recess being configured to receive and to mate with at least a portion of one of the diametrically opposed tabs such that when at least a portion of the retractable razor is disposed in the chamber, ~~each~~ at least one recess receives at least a portion of a tab.

39. (Currently amended) The packaging system of claim 38, wherein the retractable razor remains in a substantially ~~stationary~~ upright position within the housing when the ~~actuating element activates~~ the retractable razor is actuated to one or more ~~operating~~ positions.

40. (Currently amended) A system for containing an item and for displaying operation of the contained item, the system comprising:

an item having one or more moving elements constructed and arranged to activate the item to one or more operating states, the item having an actuating element operatively connected to one or more of the moving elements such that manipulation of the actuating element causes one or more of the moving elements to activate the item to one or more of the operating states; and

a packaging assembly constructed and arranged to contain at least a portion of the item, the packaging assembly defining an internal configuration sized and configured to contain the portion of the item within the packaging assembly and to permit the item to activate to one or more of the operating states, at least a portion of the packaging assembly defining an aperture configured to receive at least part of the portion of the item and further defining along a perimeter of the aperture two diametrically opposed tabs extending inwardly toward the aperture, each tab being disposed and configured such that at least a portion of one of the tabs separately contacts the portion of the product to support the product in the packaging assembly, and

the packaging assembly being at least partially constructed of a material for providing a visual inspection of at least a the portion of the item, the packaging assembly being further configured to permit at least a portion of the actuating element to extend from the packaging assembly to permit access to and manipulation of the actuating element from an area external to the packaging assembly,

wherein when the actuating element is manipulated a display of the item activating to one or more of the operating states is provided.

41. (Original) The system of claim 40, wherein a portion of the internal configuration is configured to couple the item with the packaging system and to dispose the item in a substantially stationary position within the packaging system.

42. Cancelled.

43. Cancelled.

44. Cancelled.

45. (Original) The system of claim 40, wherein the internal configuration of the packaging system includes a first portion to accommodate one or more stationary/nonmoving elements of the item and a second portion to accommodate one or more of the moving elements of the item.

46. (Original) The system of claim 45, wherein the first portion of the internal configuration is sized and configured to provide an internal clearance to permit the item to activate to one or more of the operating states.

47. (Original) The system of claim 45, wherein the second portion of the internal configuration is sized and configured to conform to a shape of the nonmoving/stationary elements of the item.

48. (Currently amended) The system of claim 40, wherein the ~~product~~ item is a retractable razor.

49. (Currently amended) The system of claim 40, wherein the ~~product~~ item is a retractable toothbrush.

50. (New) The packaging system of claim 38, wherein the retractable razor remains in a substantially upright position within the housing.



51. (New) A packaging system for containing and displaying a product comprising:  
a housing including a first portion and a second portion, the first and second  
portions being removably connected to one another and, when the first and second  
portions are connected, defining a chamber to dispose at least a portion of the product  
therein and defining an internal configuration to accommodate a shape and size of at least  
the portion of the product;

the first and second portions further defining a first closed end and a second open  
end, the second open end being configured such that at least another portion of the  
product extends from the housing through the second open end to an area external to the  
packaging system;

an insert card disposed between the first and second portions and being  
substantially planar to support the housing, the insert card defining an aperture  
configured and sized to receive at least a portion of the chamber of the housing;

two diametrically opposed slots defined along an edge of the insert card defining  
the aperture, each slot extending outwardly away from the aperture; and

a clasp configured to couple with and bias against at least part of the portion of  
the product and defining at each terminal end a tab to include two diametrically opposed  
tabs, each tab being disposed and configured such that when the clasp is coupled to the  
product, each slot receives at least a portion of one of the tabs to support the product in  
the packaging system.

### REMARKS

Applicants have amended herein Claims 22, 25-29, 31-35, 38-40, and 48-49. The claim amendments do not add new subject matter and have antecedent basis. In addition, Applicant has added herein new Claims 50-51. Applicant respectfully requests reconsideration.

Applicants have cancelled herein Claims 24, 36-37, and 42-44 without prejudice to the subject matter contained therein.

### Drawings

The Examiner has objected to the drawings because the drawings need to show sectional lines with respect to sectional views taken. The Examiner has requested corrected drawing sheets in compliance with 37 C.F.R. § 1.121(d) be submitted for the Examiner's consideration.

Applicants submit herewith Replacement Sheets displaying Fig. 6, Fig. 9, and Fig. 9E. Applicants respectfully submit the drawings illustrate the sectional lines at which cross sectional views are taken.

### Specification

The Examiner has objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. In particular, the Examiner points out that Claim 48 and 49 lack antecedent basis for the term "product," and may include inconsistent terminology with Claim 40 that positively claims an "item." Applicants have herein amended Claim 48 and Claim 49 to delete the term "product" and to include therein the term "item" which has antecedent basis in independent Claim 40 from which Claims 48 and 49 depend.

In addition, the Examiner has rejected Claims 24 and 37 as being indefinite pursuant 35 U.S.C. § 112, second paragraph. Applicants have cancelled herein Claims 24 and 37 without prejudice to the subject matter contained therein.

Rejection of Claims 22-42 and 45-49 Pursuant 35 U.S.C. § 102(b)

Claims 22-42 and 45-49 have been rejected pursuant 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,872,551 issued to Theros ("Theros"). Applicants respectfully traverse the rejection of the Claims for the reasons given below.

Independent Claim 22 has been amended herein. Applicants respectfully submit that Theros does not teach each and every element of Claim 22 as required to anticipate a claimed invention pursuant 35 U.S.C. § 102(b). More specifically, Theros does not teach at least the limitation of Claim 22 directed to *two diametrically opposed tabs disposed along an edge of the insert card defining the aperture, each tab extending inwardly toward the aperture and being disposed and configured such that at least a portion of one of the tabs separately contacts the portion of the product to support the product in the packaging system.*

Theros teaches a package (10) including a first panel (32) connected along a base portion (44) to a second panel (34). The base portion further includes a pair of openings (48) along a base (52) that enable each member (16) of pliers (12) to extend from the package (10). The base (52) further includes a pair of bridge supports (54) and (56) located in each panel (32) and (34) in a recess area (38). The supports (54) and (56) are configured to tightly contact each other to form a reinforced structure to support the pliers (12) disposed in the packaging (10). (See Fig. 3, and col. 3, lines 13-15, 26-27, 41-43, and 46-50).

The packaging system of Claim 22 comprises two diametrically opposed tabs with each tab extending inwardly toward the aperture and being disposed and configured such that at least a portion of one of the tabs separately contacts the portion of the product to support the product in the packaging system. In contrast to the bridge supports (54) and (56) of Theros, at least one of the two diametrically opposed tabs of Claim 22 contacts the portion of the product to dispose the product within the packaging system. Unlike the bridge supports of Theros, the packaging system of Claim 22 does not require the tabs to mate to or to contact one another, as do the supports of Theros, to support the portion of the product within the packaging system. Theros therefore does not teach each and every element of Claim 22.

Thus, Claim 22 is patentably distinct from Theros. Accordingly, the rejection of Claim 22 pursuant 35 U.S.C. § 102(b) should be withdrawn.

Without commenting or acceding to the bases for the rejections of dependent Claims 23, 25-35, and 38-39 cited in the Examiner's Action, Applicants respectfully submit Claims 23, 25-25, and 38-39 depend on Claim 22 and are patentable for at least the reasons given above. The rejection of Claims 23, 25-35, and 38-39 pursuant 35 U.S.C. § 102(b) therefore should be withdrawn.

With respect to independent Claim 40, Claim 40 has been amended herein. Like Claim 22, Claim 40 includes the limitation of the packaging assembly *defining an aperture configured to receive at least part of the portion of the item and further defining along a perimeter of the aperture two diametrically opposed tabs extending inwardly toward the aperture, each tab being disposed and configured such that at least a portion of one of the tabs separately contacts the portion of the product to support the product in the packaging assembly*. Applicants respectfully submit that Theros does not teach at least this limitation of Claim 40 for the reasons given above.

Thus, Claim 40 is patentably distinct from Theros and the rejection of Claim 40 pursuant 35 U.S.C. § 102(b) should be withdrawn.

Without commenting or acceding to the bases for the rejections of dependent Claims 41, and 45-49 cited in the Examiner's Action, Applicants respectfully submit Claims 41 and 45-49 depend on Claim 40 and are patentable for at least the reasons given above. The rejection of Claims 41 and 45-49 pursuant 35 U.S.C. § 102(b) should be withdrawn.

#### Patentability of New Claim 50 and 51


New dependent Claim 50 depends indirectly on independent Claim 22. For at least the reasons given above, Claim 50 is patentable in view of the prior art of record.

New independent Claim 51 is directed to a packaging system and is patentable in view of the prior art of record at least with respect to the claimed limitations of *two diametrically opposed slots defined along an edge of the insert card defining the aperture, each slot extending outwardly away from the aperture; and a clasp configured*

*to couple with and bias against at least part of the portion of the product and defining at each terminal end a tab to include two diametrically opposed tabs, each tab being disposed and configured such that when the clasp is coupled to the product, each slot receives at least a portion of one of the tabs to support the product in the packaging system.*

Based upon the foregoing amendments and discussion, the present application is in condition for allowance, and an action to this effect is respectfully requested. Should the Examiner have any questions concerning this response, he is invited to telephone the undersigned.

Respectfully submitted,



Carol H. Peters  
Registration No. 45,010  
MINTZ, LEVIN, COHN, FERRIS  
GLOVSKY and POPEO, P.C.  
Attorneys for Applicant  
One Financial Center  
Boston, Massachusetts 02111  
Telephone: 617/348-4914  
Facsimile: 617/542-2241  
email: [chpeters@mintz.com](mailto:chpeters@mintz.com)

Date: October 20, 2006

Attorney Docket No. 25739-024

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Leventhal et al.  
Serial No: 10/633,179  
Filed: August 1, 2003  
For: RETRACTABLE RAZOR ASSEMBLY AND  
PACKAGING SYSTEM FOR SAME

Examiner: Steven B. Pollicoff  
Art Unit: 3728

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

LETTER TO OFFICIAL DRAFTSMAN

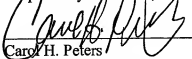
Sir:

Subject to the approval of the Examiner, enclosed for filing in the patent application identified above are three (3) sheets of Informal "Replacement Sheet" Drawings including Figures 6, 9 and 9E.

If the enclosed papers are considered incomplete, the Mail Room is respectfully requested to contact the undersigned collect at telephone 617/348-4914.

The Commissioner is hereby authorized to charge any fees which may be required in connection with this submission of Formal Drawings to the deposit account of the undersigned, Deposit Account No. 50-0311, referencing Attorney Docket No. 25739-024. A duplicate copy of this Letter is enclosed herein for this purpose.

Respectfully submitted,



Carol H. Peters  
Registration No. 45,010  
MINTZ, LEVIN, COHN, FERRIS  
GLOVSKY and POPEO, P.C.  
Attorney for Applicant(s)  
One Financial Center  
Boston, MA 02111  
Telephone: 617/348-4914  
Facsimile: 617/542-2241  
email: [cpeters@mintz.com](mailto:cpeters@mintz.com)

Date: October 20, 2006

Date of Deposit: October 20, 2006

Attorney Docket No. 25739-024

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Art Unit: 3728

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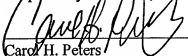
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Respectfully submitted,



Carol H. Peters

Registration No. 45,010  
MINTZ, LEVIN, COHN, FERRIS  
GLOVSKY and POPEO, P.C.  
Attorney for Applicant(s)  
One Financial Center  
Boston, MA 02111  
Telephone: 617/348-4914  
Facsimile: 617/542-2241  
email: [cpeters@mintz.com](mailto:cpeters@mintz.com)

Date: October 20, 2006

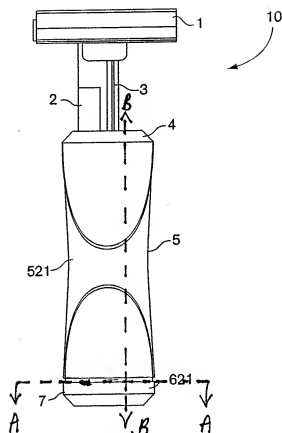


Fig. 6

REPLACEMENT SHEET

Serial No.: 10/633,179  
Agent: Mintz Levin  
Boston, MA 02111  
Sheet 1 of 3



9/18

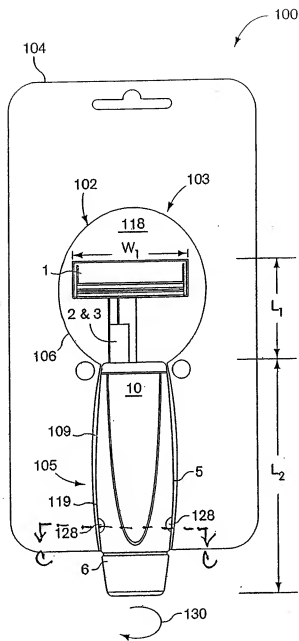


Fig. 9

12/18

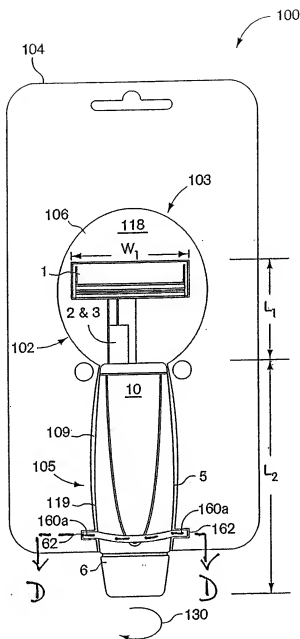


Fig. 9E



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Serial No. 10/633,179 File No. 25739-024 By: CHP  
Title: Retractable Razor Assembly and Packaging System for Same  
Application of Leventhal Et al. Date: 8/1/03

The U.S. PTO Mail Room acknowledges receipt of the following on the date stamped hereon:

- |  |  |
|--|--|
| <input type="checkbox"/> Req. for CPA under 37 CFR 1.53(d)                           | <input type="checkbox"/> Provisional Application Cover Sheet                     |
| <input type="checkbox"/> Change of Attorney's Address                                | <input type="checkbox"/> Inf. Discl. Statement, PTO Form 1449                    |
| <input type="checkbox"/> New Power of Attorney                                       | <input type="checkbox"/> References Cited  |
| <input type="checkbox"/> Patent Application  | <input checked="" type="checkbox"/> Copy of Notice to File Missing Parts         |
| <input type="checkbox"/> Non-provisional ( <input type="checkbox"/> Provisional      | <input checked="" type="checkbox"/> Amendment Response to Non-Compliant          |
| Incl. _____ pages, ( _____ pgs) Specification,                                       | <input type="checkbox"/> Petition for Ext. of Time (x2) Amendment                |
| ( _____ pgs) Abstract, ( _____ pgs) Claims ( _____ # claims)                         | <input type="checkbox"/> Issue Fee Transmittal                                   |
| <input type="checkbox"/> Design Patent Application                                   | <input checked="" type="checkbox"/> Letter to Official Draftsperson              |
| <input type="checkbox"/> Declaration(s)  | <input type="checkbox"/> Notice of Appeal  |
| <input checked="" type="checkbox"/> Drawings _____ sheet(s) (FIGS. <u>6, 9, 9E</u> ) | <input type="checkbox"/> Brief (x3)  |
| <input type="checkbox"/> Formal ( <input checked="" type="checkbox"/> Informal)      | <input type="checkbox"/> Check for \$ _____ Check # _____                        |
| <input type="checkbox"/> Verified Statement claiming small entity status             | <input checked="" type="checkbox"/> Transmittal Letter (x2)                      |
| <input type="checkbox"/> Assignment and Cover Sheet                                  | <input type="checkbox"/> Cert. of Mailing under 37 CFR 1.8(a)                    |
|  | <input checked="" type="checkbox"/> Express Mail Label No. <u>950669861580US</u> |

XX Other Letter to the Examiner; Copy of Faxed Notice of  
Non-Compliant Amendment

DATE MAILED 10/20/06

## **EXHIBIT B**



## UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1459  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,179	09/15/2003	Jerald C. Seelig	619.489 ACC.CIP-Bingo	1427
21707	7590	07/24/2006	Nig	
IAN F. BURNS & ASSOCIATES				
P.O. BOX 71115				
RENO, NV 89570				
EXAMINER				
LAYNO, BENJAMIN				
ART UNIT		PAPER NUMBER		
3711				

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# **Notice of Non-Compliant Amendment (37 CFR 1.121)**

Application No.

10/663179

Examiner

LAYNO

Applicant(s)

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on \_\_\_\_\_ is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

☐ 1. Amendments to the specification:

- ☐ A. Amended paragraph(s) do not include markings.
- ☐ B. New paragraph(s) should not be underlined.
- ☐ C. Other \_\_\_\_\_.

☐ 2. Abstract:

- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
- ☐ B. Other \_\_\_\_\_.

☒ 3. Amendments to the drawings:

- ☒ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37-CFR 1.121(d).
- ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
- ☐ C. Other \_\_\_\_\_.

☒ 4. Amendments to the claims:

- ☒ A. A complete listing of all of the claims is not present.
- ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
- ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
- ☒ D. The claims of this amendment paper have not been presented in ascending numerical order.
- ☒ E. Other: CLAIMS 1-21 MISSING.

☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
\_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

## **TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment, an amendment filed after allowance, or a drawing submission (only). If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month, or thirty (30) days, whichever is longer**, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

KIMBERLY COOPER

571 272 4339

Legal Instruments Examiner (LIE), if applicable

Telephone No.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,179	09/15/2003	Jerald C. Seelig	619.489 ACC CIP-Bingo Nig	1427
21707	7590	10/23/2006	EXAMINER	
IAN F. BURNS & ASSOCIATES P.O. BOX 71115 RENO, NV 89570				
			ART UNIT	PAPER NUMBER

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.





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P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Paper No.

**Letter Withdrawing a Notice of Non-Compliant Amendment**

The Notice of Non-Compliant Amendment mailed on 7/14/06 was sent in error, and is hereby withdrawn. The application is being forwarded to the examiner for appropriate action. (Note: this letter does not apply to any Notice of Non-Compliant Amendment where the amendment was a reply to a final Office action.)

MS. Cooper  
Legal Instruments Examiner (LIE)

571-272-4339  
Telephone No.